

REMARKS

Previously, claims 1-19 were pending. After the applicant has reviewed the office action from the examiner, the claims have been amended. In this office action, claims 1, 2, 5, 11, and 12 are amended. Claims 3, 4, 6-9, 13-19 are cancelled. Claim 10 remains the same.

Claim 1 is amended to include canceled claims 3, 4, 6, 7, 8, and 9. Claim 11 is amended to include canceled claims 13-18.

In response to the examiner's comments in this office action, first, the applicant has narrowed the energy source to a battery pack and canceled the wiring as an energy source. Thus the drawings remain the same.

Secondly, applicant has amended claims 1 and 11 specifying a battery pack and its location upon the base member. The battery pack is structurally related to the base member.

Thirdly, the Campbell patent, No. 4,197,807, shows a collapsible traffic cone with a base portion. The '807 patent does imply a method of using a collapsible traffic cone and applicant hereby cancels claim 19.

Fourth, though the patent to Phillips, No. 6,048,590 discloses a base member 22, the base member appears as a hub for wire tethers and noticeably less than the largest diameter of the spiral. In contrast, the base member of the present invention extends at least the largest diameter of the spiral.

Then the '590 patent discloses holiday lights clamped to the structure in FIGS. 2 and 3. The holiday lights may be removed by loosening the clamps. In contrast, the present invention has illuminating means formed into the band, integrally and permanently.

And then the '590 patent has a cap member the examiner identifies as similar to the cross brace of the present invention. However, the cap member does not disclose how it secures to the hub or other member to retain the spiral

in a flat state. The cross brace of the present invention has a strap or button that secures to the base member, retaining the structure when collapsed.

Then the patent to Ybanez, No. 2,275,711 discloses a safety strap that secures a safety signal when collapsed. The safety strap connects to a base upon one side then crosses over the collapsed signal. The safety strap secures its free end to a notch 32 opposite the safety strap's initial connection to the base. The safety strap does not cross beneath the entire width of the base. However, the present invention in one embodiment has a strap fixed to the cross member. The strap passes over the collapsed spiral structure and then passes beneath the structure where it then secures back upon its initial and fixed connection to the cross member. The present invention has a longer strap than the '711 patent and does not call for notching the base in contrast to the '711 patent which does not suggest those modifications. Prior Art as a reference must suggest the desirability of modification, See *In re Laskowski*, 10 USPQ2d 1397,1398 (Fed. Cir. 1989)(where loose wheels were insufficient reference against tight wheels).

Then the patent to Rahman, No. D421,810, discloses a spiral light set with a plug. The light set has a hook upon the top and lighting joined to the surface of the spiral and powered by a plug connection to utility service. In contrast the present invention lacks a hook upon the top. The claims have also been amended to remove wiring, or utility service, as an energy source for the invention and make lighting integral to the structure.

Next, the examiner asserts the shape of the structure in the '590 patent can be obviously modified, based on an intended use. Applicant asserts that the '590 patent discloses a Christmas tree shaped structure with lights for a holiday decoration. Few if any other holidays use cylinders as decorations. Further, the present invention is in the area of traffic controls where cones and barrels are commonly used to direct traffic. The present invention has a shape to mimic both

cones and barrels but at less weight and cost. The '590 patent though does not suggest traffic control or cylindrical form, See *In re Laskowski*.

Fifth, the patent to Shu, No. 6,109,764, describes an LED lamp and socket for light sets where electrical polarity is necessary for proper operation: the LED lamps install one way only. Though the present invention has illuminating means with LED in one embodiment, the present invention makes no claim to electrical polarity of the LED or a positioning means of an individual lamp.

Sixth, the patent to Headley, No. 6,164,304, describes a collapsible umbrella covered by a strap secured by hook and loop fasteners. When the umbrella is not in use, the strap covers at least one third the length of the umbrella as it wraps around the circumference of the collapsed umbrella. In contrast, the present invention has a narrow strap 12 as shown in FIG. 3. The strap of the present invention does not completely cover the invention and primarily secures the spiral in a collapsed state. The strap 12 has a width no more than the base member 10. Applicant also asserts that the '304 patent is non-analogous art regarding collapsible radial rib structures covered for umbrella usage while the present invention is a collapsible spiral structure uncovered as a traffic control device. The '304 patent does not suggest usage of a radial rib structure in the traffic control field, See *In re Vaack*, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991).

Seventh, regarding claim 11, the '807 patent shows a collapsible traffic cone with a base portion. The '807 patent secures the collapsed cone with a wing nut 6 above a disk 7 and upon a threaded rod 5, three parts. The cone can be opened by unscrewing the wing nut or turning the wing nut so it passes through a groove 8 in the disk. However, the present invention secures a spiral in a collapsed state with two parts, a button and a fitting. In one embodiment, the button connects to the fitting by threads. Though similar to the '807 patent, the button threaded upon a fitting uses one less part than the '807 patent. Applicant

asserts that reducing the number of parts to secure a collapsed spiral meets a long felt need to reduce costs of manufacturing.

In another embodiment, the button connects to the fitting using a bayonet type lock. Though similar to the grooves in the disk of the '807 patent, the present invention uses one less part and again meets the need to reduce manufacturing cost. Further, the present invention retains the button atop and upon the cross brace of the spiral while the '807 patent maintains the wingnut 6 upon the rod 5 even when the cone of the '807 patent is extended.

Eighth, the patent to Say, No. 5,335,622, describes an indicator cap for rinse agent compartments in dishwashers. The patent teaches a thumb pressed diaphragm to move rinse agent, as well as lugs 70 to secure the cap, one way only, into matching lugs 73. Applicant asserts that indicator caps used in dishwashers are non-analogous art to a collapsible traffic control device of the present invention. Indicator caps of the '622 patent do not suggest usage of lugs in the traffic control field, See *In re Vaeck*.

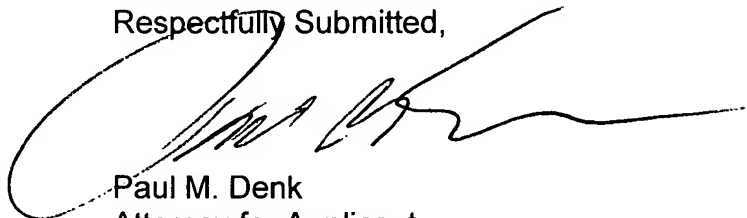
In contrast, the present invention has matching circumferential threads upon the button and the fitting. The threads allow rotation of the button in excess of 360° to secure the spiral flat upon the base and to resist the expansive tendencies of the spiral. Further, the present invention relates to the field of traffic control devices while Say relates to the field farther away of dishwasher rinse agent compartments. As the present invention shares threaded fittings with Say '622, claim 11 has been amended to include a bayonet lock.

Ninth, the examiner asserts that obviousness upon combined references can not be attacked at each individual reference. However, obviousness from combined references can be attacked for lack of suggestion or expectation of success, See *In re Vaeck*. And, the prior art must suggest the desirability of modification, See *In re Laskowski*. Here, the Shu, Headley, and Say patents do not suggest desirable improvements to a collapsible spiral used to direct

vehicular traffic, See *In re Laskowski*. As before, this application as amended withstands the prior art as cited by the examiner, whether the prior art be applied individually, or in combination, for use either anticipating or rendering obvious the claimed subject matter of the applicant's invention. Thus, obviousness cannot be established by combining teachings of the prior art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting that combination. See the cases of *Ex parte Beuther*, 71 USPQ2:1313, (Bd. Pat. App. & Int. 2003) and *In re Geiger*, 815 F2d. 686 (Fed. Cir. 1987).

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Favorable action by the examiner is respectfully requested.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Paul M. Denk', is written over the typed name.

Paul M. Denk
Attorney for Applicant
Pat. Off. Reg. No. 22,598
763 South New Ballas Road
St. Louis, MO 63141
(314)872-8136